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*Via E-Mail and U.S. Mail*

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**Re: Comments on Exide Technology's March 21, 2013 Response to Citizen  
Comments on the Revised Response Action Work Plan and Community  
Relations Plan**

Dear Ms. Ligarde and Mr. Shafford:

As you know from my previous comments and participation in regulatory developments regarding Exide and its impact on area communities, I am an environmental professional with a strong interest in the interface between industrial operations and their potential impact on environmental quality. I have monitored and contributed at times to comments previously submitted by other concerned citizens regarding the secondary lead smelter in Frisco.

I note that on March 21, 2013 Vanessa Coleman at Exide responded to comments filed by citizens on:

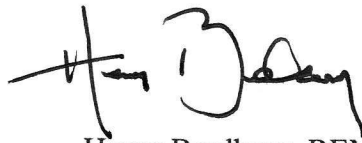
- February 13, 2013, to TCEQ concerning Exide's revised draft Response Action Work Plan (RAWP) for the North Landfill and, on
- March 8, 2013, to TCEQ on Exide's draft Community Relations Plan (CRP).

The attachment to this letter provides comments on Exide's responses.

In conjunction with this submission, I want to express my disappointment with the public engagement process set up by Exide and approved by TCEQ. The arrangement is such that TCEQ defers to Exide to provide responses. This is especially troubling given that TCEQ approved Exide's final RAWP with "updates" that were not even made public prior to TCEQ approval. Given the TCEQ's regulatory oversight of compliance with the Agreed Order and applicable rules, its apparent willingness to allow Exide to address community comments in lieu of providing its own responses is abdication of duty by TCEQ, who entrusted with the critical mission of protecting public health and the environment.

I request that the preceding remarks as well as the attached responses to the detailed responses in Exide's letter are afforded full and fair consideration by TCEQ, Exide, and EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry Bradbury". The signature is stylized with a large, looped "H" and a cursive "B".

Henry Bradbury, REM

cc:

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**Follow-Up Comments On Exide's March 21, 2013 Response  
To Citizen Comments on Revised Response Action Work Plan  
And Community Relations Plan**

*Some Points Relative To Exide's March 21, 2013 Cover Letter*

In the third paragraph of the cover letter, Exide states that changes were made to the work plan to add an additional downwind monitor. In the original Perimeter Air Monitoring Plan (November 21, 2012), the plan states on page 4 that there will be "One upwind and three downwind monitoring locations." In the current plan (Revision 3, February 20, 2013), on page 4, the plan still states "One upwind and three downwind monitoring locations will be established." The most recent Air Monitoring Summary posted on the Exide Frisco Closure website, (March 13, 2013) still shows one upwind and three downwind monitors. **So, it appears that Exide has not added an additional downwind monitor.**

On a related air quality concern not addressed in the Exide letter, I note that there apparently have been recent high ambient air lead levels recorded by the TCEQ air monitors. Since the demolition activities began (February 26th), there have been 2 days of TCEQ monitoring data reported; February 27th and March 5th (TCEQ monitors every 6th day). **On each of these days there have been lead concentrations (24-hour average) that have exceeded the NAAQS (3-month average).** On Feb 27th the 5th Street monitor recorded 0.196 µg/m<sup>3</sup> and the Stonebrook monitor recorded 0.147 µg/m<sup>3</sup>. On March 5th, the Stonebrook monitor recorded 0.191 µg/m<sup>3</sup>.

**I. Revised Response Action Work Plan**

*General Comments 1,2*

As will be noted relative to this section of Exide's response and other sections below, there are often **points raised in the citizen comments that Exide totally ignored.** For example, a redline version of the RAWP revisions was requested in order to facilitate review of Exide's changes. **That request was ignored.** Without such redline, it makes it very difficult for a reviewer, especially a citizen, to identify revisions. The unresponsiveness showcases yet another example of how the current structure of the public engagement process reliant upon Exide does not work to the benefit of the public.

I also have reviewed the latest updated RAWP **dated March 1, 2013** and, although some changes have been made in response to citizen and EPA comments, there are precious few. Moreover, **one of the most striking features of the revised RAWP is the number of areas in which EPA's recommendations were ignored:**

- An EPA recommendation that Exide "conduct an evaluation of the closed portion of the North Landfill" due to hazardous samples taken there by EPA and questionable historical treatment methods by Exide;
- An EPA recommendation that Exide conduct a site-wide groundwater investigation "because of potential issues with slag disposal in other cells in this landfill and in other locations on the site";
- An EPA recommendation that a lower "stop work" wind speed be utilized as a protective measure "since the Exide demolition site is in an urban type of environment in close proximity to residences and a school";

- Numerous EPA recommendations on how often air monitoring equipment was to be cleaned, checked and calibrated; and
- Numerous EPA recommendations on how Exide proposed to calculate its “stop action” and “take action” levels based on air monitoring sample results.

General Comments 3,4.

I appreciate that Exide accepted the comment that its original treatment plan required a RCRA authorization and has modified its treatment program to utilize a method that is exempt from RCRA permit requirements. (Quite frankly, I was taken aback that TCEQ originally approved an in-situ land treatment method that required a RCRA permit without providing for that in the relevant Agreed Order.) By revising the treatment method, Exide now recognizes that the Agreed Order is an impermissible mechanism for authorizing hazardous waste treatment. However, **the RAWP does not provide any detail as to how Exide will comply with the state counterparts of 40 C.F.R. Part 265, Subparts AA, BB, and CC, as required under the state counterpart of the RCRA permit exemption in 40 C.F.R. §262.34(a).** I believe the requirements in those subparts are especially important because they relate to air quality protection incident to storage or treatment of hazardous wastes in containers.

In addition, Exide does not address the assertion in *General Comment 4* that **the use of the North Landfill to accept RCRA-corrective action-related wastes makes that landfill a Corrective Action Management Unit** that should require a modification of the facility’s RCRA permit and necessitate public notice and comment. If TCEQ and Exide disagree with this observation, I would appreciate an explanation of TCEQ and Exide’s perspective on this issue.

General Comments 5, 6, 7, 8, 9, Third Comment on RAWP Section 2.2 and Appendix D.

**The most significant omission in Exide’s response** in this section is its failure to respond at all to the statement made in *General Comment 5* that, as recommended by EPA, Exide should conduct an evaluation of the closed portion of the North Landfill since similar failed treatment methods were used in that area as well. I believe that this is an extremely important issue that deserves a forthright response from Exide.

I am also concerned that Exide has not directly responded to the issue raised in *General Comment 6*. Although Exide identified site areas where groundwater sampling will be performed, **it ignored any discussion of EPA’s recommendation** that Exide conduct a site-wide groundwater evaluation. In addition, **Exide ignored** the related question posed in *General Comment 8* as to **how Exide’s proposed groundwater monitoring program would compare to a RCRA-quality program**. I believe that these are extremely important questions that deserve a forthright response from Exide.

Exide evidently has a different opinion over the regulatory status of the North Landfill and issue of whether or not removal of hazardous wastes constitutes a “RCRA closure” despite the fact that the landfill will continue to operate as a non-hazardous unit after the RCRA-regulated waste is removed. (See *General Comment 7*.) But even if Exide’s removal of hazardous wastes placed there negates the landfill’s status as an interim status unit, **what about the wastes in the closed portion of the landfill that will remain after closure?** What justification is there for not treating the landfill as an interim status unit if RCRA hazardous waste will remain after closure? In addition, what justification is there for not requiring a RCRA post-closure permit and related financial assurance? Indeed, in the absence of RCRA post-closure requirements, the financial assurance associated with

closure of a non-hazardous, Class 2 Landfill could later prove to be woefully inadequate for addressing removal of the wastes being left there.

First Comment on RAWP Section 2.2

*Nowhere does Exide address the main point in this comment regarding the need to evaluate and address the closed portion of the North Landfill.* I, however, note Exide's recognition of the appropriateness to include arsenic and selenium in its groundwater monitoring plan and to sample excavated areas for both lead and cadmium.

Second Comment on RAWP Section 2.2 and Appendix D.

*Nowhere does Exide address the points regarding the closed portion of the North Landfill. Nowhere does Exide address an evaluation of the integrity of the landfill liner that would be a critical factor in preventing releases of hazardous waste and constituents into the environment.* Finally, even if the EPA RCRA Waste Sampling Draft Technical Guidance has not been finalized, is there any reason why it should not be used as guidance?

Comments on DC Plan Section 2.0; PAM Plan Section 3.2, 3.4, 7.0

In the final paragraph in this section, Exide states: "In response to comments, Exide noted that...the remediation is occurring within an area surrounded by a berm and that contains a collection system, allowing for two alternative means of handling water, if that were necessary." In the citizen comments, it was stated that the DC Plan provided that runoff would be handled by the facility storm water collection system and questioned whether or not contaminated dry-weather flow from remediation activities could properly be handled in that system. *Nowhere does Exide address this question.*

Comment on DC Plan Section 3.1

Exide's response in this section is not based upon fact. Exide states that "PM2.5 is less likely to be linked and correlated to localized potential fugitive dust generation associated with the remediation and demolition activities..." **Just the opposite would be true.** Since the dust that will be generated during the demolition activities will be fugitive in nature (the process is shutdown), the amount of fugitive dust is proportional to the wind speed, and the smaller the particle, the more likely the particle will become airborne and stay airborne longer.

Comment on PAM Plan Section 3.5.3, 4.1, 5.0

The last sentence in this section of the Exide letter states: "Recent data provided in the posted summary reports supports the protectiveness of this program." **I take issue with this conclusion for the reasons stated below:**

- a. On the first day (Feb 26th) of the demolition and air monitoring, Exide did not have the upwind air monitor working. I also note that the sampling method limit of detection for lead (0.19 µg/m3) is above the NAAQS standard of 0.15 µg/m3 (3-month average).
- b. On the second day (Feb 27th) the upwind monitor was not put into operation until 4:15 p.m., or just 15 minutes before the end of demolition activities. In addition, the Field Data sheet shows the upwind monitor operating from 4:15 – 4:30 p.m. However, when one looks on the Real Time Monitoring Data table, the upwind monitor appears to operate from 4:00 – 6:00 p.m. The limited upwind concentrations are over one order of magnitude higher than the downwind monitors (315 µg/m3 vs. ~11 µg/m3). I believe this clearly shows that something is wrong with the monitoring data.

- c. On Feb 27th, the same day that the TCEQ records an ambient lead concentration of 0.196 µg/m<sup>3</sup> at the 5th Street monitor, the three downwind Exide monitors all report lead concentrations that were less than the Limit Of Detection (LOD) of 0.17 µg/m<sup>3</sup>.
- d. Also when one looks at the wind direction for Feb 27th, only one downwind monitor (G4607) is located downwind of the demolition activities. The other two downwind monitors (F5001 & G4607) were located such that they did not monitor the demolition activities.

The preceding observations are taken from only the first 2 days of data, so there may be other examples of problems if one looks at the remaining days. A brief review of the most recent data, shows that PM data is all over the map – raising the question as to whether the proposed monitoring scheme of associating PM emissions to lead levels is appropriate.

## II. Community Relations Plan Dated February 2013 (CRP)

The framework established in the CRP does not give the interested public an opportunity for “meaningful” input. I appreciate the review Exide evidently gave to the comments, and the time it took to respond. However, with the exception of giving flexibility to have some meetings in an open house format, **I find no substantive changes to the original CRP addressing the stated citizen concerns.** The response Exide provided primarily consists of additional explanations and defenses of the original CRP.

I am also surprised that Exide now states that the CRP was “developed based on the RCRA Public Participation Manual.” The citizens cited to that Manual in highlighting the deficiencies of the CRP, and the CRP appears to be at odds with the spirit and details of that Manual. As the citizen comments pointed out, that Manual specifically defines public participation to include, without limitation, *assimilation* of public viewpoints and preferences, and *demonstration* that those viewpoints and preferences have been considered by the decisions makers. **These elements are completely absent from the CRP** even considering Exide’s responses to citizen comments. Instead, the public is left with reports of decisions already made and actions already taken. Exide agrees to listen, but does not agree to give any timely consideration to public input.

What the citizens are asking for, and what is described in the relevant Manual, is a real opportunity to give input when it matters (i.e. before Exide already has made firm decisions or taken actions). **Under the CRP as now described, citizens simply will not have that opportunity.** As a result, with the limited exception of the suggestion that some meetings be held in an open house format, citizen comments on the CRP are unanswered by Exide.